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Counsel for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MATTHEW ELVEY, an individual, BRAD
ZIGLER, an individual, and JOEL
GRIFFITHS, an individual, on their own
behalf and on behalf of all others similarly
situated,

Plaintiffs

v.

TD AMERITRADE, INC., a New York
corporation, and DOES 1 to 100,

Defendants.

No. C 07 2852 VRW
No. C 07 4903 VRW

Judge Vaughn R. Walker

**STIPULATION FOR
CONSOLIDATION AND FOR LEAVE
TO FILE CONSOLIDATED
COMPLAINT**

1 **STIPULATION FOR CONSOLIDATION AND FOR**
2 **LEAVE TO FILE CONSOLIDATED COMPLAINT**

3 Pursuant to Federal Rules 42 and 15, and Local Rule 7-12, Plaintiffs Matthew Elvey,
4 Brad Zigler, and Joel Griffiths (collectively “Plaintiffs”) and Defendant TD Ameritrade, Inc.
5 (“Ameritrade”) and hereby stipulate to consolidate *Elvey v. TD Ameritrade, Inc.*, No. C07
6 2852 VRW (N.D. Cal.) (“*Elvey* Action”) and *Zigler v. TD Ameritrade, Inc.*, No. 07-4903
7 VRW (N.D. Cal.) (“*Zigler* Action”) (together the “Actions”) and to filing the attached
8 Consolidated Complaint.

9 Rule 42 provides the Court with the authority to “join for hearing or trial any and all
10 matters at issue” in separate actions which involve “common question[s] of law or fact.” Fed.
11 R. Civ. P. 42(a). “[U]nder Rule 42, the main question a court must address is whether there
12 are common questions of law or fact [and] then must weigh the saving of time and effort
13 consolidation would produce against any inconvenience, delay or expense that it would
14 cause.” *Single Chip Systems Corp. v. Intermec IP Corp.*, 495 F. Supp. 2d 1052, 1057 (S.D.
15 Cal. 2007). Here, the *Elvey* action and the *Zigler* action involve substantially the same claims
16 and class. Further, Plaintiffs and Defendant have reached a proposed class settlement on
17 behalf of a national class of current and former Ameritrade accountholders. This consolidation
18 will facilitate and promote the Court’s review of the proposed settlement – the first step
19 towards expeditiously disposing of two closely related matters on the Court’s docket.

20 Rule 15 provides that Plaintiffs “may amend [their] pleading . . . with the opposing
21 party’s written consent.” Fed. R. Civ. P. 15(a)(2). Ameritrade has again consented to the
22 amendment of Plaintiffs’ claims and the filing of the Consolidated Complaint. The
23 Consolidated Complaint conforms to the claims which the proposed settlement is intended to
24 compromise and release, and is an essential prerequisite to the proposed settlement.

25 **STIPULATION**

26 IT IS HEREBY STIPULATED, pursuant to Local Rule 7-12, that the *Elvey* Action and
27 the *Zigler* Action shall be consolidated for all purposes and Plaintiffs shall have leave to file
28 the attached Consolidated Complaint.

1 Dated: May 30, 2008

By: s/Ethan Preston

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Counsel for Plaintiffs

18 Pursuant to Section X of the Northern District of California's General Order No. 45 on
19 electronic case filing and 28 U.S.C. § 1746, the filer attests that the undersigned concurred to
20 the statement above on May 30, 2008.

21 Dated: May 30, 2008

By: s/Lee H. Rubin

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AMERITRADE, Inc.*

26 PURSUANT TO STIPULATION, IT IS SO ORDERED.

27 Date: June 13, 2008

By: 

THE HONORABLE VAUGHN R. WALKER
UNITED STATES DISTRICT COURT JUDGE